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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 26

WEST INDIA OIL COMPANY (PUERTO RICO),
PETITIONER,

Manuel V. Domenech *vs.*

~~RAFAEL SANCHEZ BONET~~, TREASURER OF
PUERTO RICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 2, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

I

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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WEST INDIA OIL COMPANY (PUERTO RICO),
PETITIONER,

vs.

RAFAEL SANCHO BONET, TREASURER OF
PUERTO RICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3501.

WEST INDIA OIL COMPANY (P. R.),
PLAINTIFF, APPELLANT,

v.

R. SANCHO BONET, TREASURER,
DEFENDANT, APPELLEE.

TRANSCRIPT OF RECORD.

[Filed in Circuit Court of Appeals August 1, 1939.]

[Filed in the Supreme Court of Puerto Rico September 20, 1937.]

IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF
SAN JUAN, PUERTO RICO.

Civil No. 23,715.

WEST INDIA OIL COMPANY (P. R.), PLAINTIFF,

v.

RAFAEL SANCHO BONET, TREASURER OF PUERTO RICO, &
DEFENDANT.

DECLARATORY JUDGMENT.

AMENDED PETITION.

Now comes the plaintiff by its undersigned attorneys and respectfully alleges and states:

1. That the plaintiff is a corporation organized under the laws of Puerto Rico, registered in the executive secretary's office, and does business in Puerto Rico; has its principal office in San Juan and engages in the business of importing, purchasing and selling

oil (petroleum) and some of its by-products. That the defendant Rafael Sancho Bonet is the Treasurer of Puerto Rico, was duly appointed and acts as such.

2. That on December 5, 1932, the predecessor in title of the plaintiff established in San Juan, Puerto Rico, under the laws of the United States, and in conformity with a permit obtained from the Custom House Service of the Federal Government a bonded tank for receiving and depositing fuel oil brought from foreign countries, part of which is destined for re-shipment to foreign countries and for use by ships on the high seas in interstate and foreign commerce, and part of which is to be used and consumed in Puerto Rico, and all of said fuel oil—once brought and deposited in the aforesaid bonded tank—being under the absolute authority and control of the United States custom house authorities; the drawing of same being allowed only with the consent and under the supervision of the aforesaid custom authorities of the United States. If said fuel oil is drawn to be used and consumed in Puerto Rico, and thus becomes a subject of commerce in Puerto Rico, the Federal tax must be paid at the time of drawing same, and hence the custody of the Federal Customs Service over the fuel oil so drawn to be sold, used or consumed in Puerto Rico ends, and the importation of this part of the oil also ends; no Federal tax being levied on the fuel oil drawn from said tank for export to foreign countries and for re-shipment for the use of ships on the high seas, beyond the territorial waters of the Island of Puerto Rico.

3. That the plaintiff draws the quantities of said fuel oil from the aforesaid bonded tank for sale and use in the Island of Puerto Rico, its importation thus ends and the Federal tax is paid; the other quantities are drawn with the consent of the Customs Service of the United States, for export to foreign countries and on ships using said fuel oil for their propulsion, on the high seas, beyond the territorial waters of Puerto Rico, and on which no tax is paid under the laws of the United States.

4. That from December, 1932 to August 31, 1935, the plaintiff

and its predecessor in title have drawn from the aforesaid bonded tank approximately 46 million gallons of fuel oil, which it has exported from Puerto Rico for the use of ships employing fuel oil and to be used exclusively on the high seas in interstate and foreign commerce, and no part of said oil having been consumed in the coastwise trade of Puerto Rico.

5. That Section 62 of the Internal Revenue Act of Puerto Rico, amended by Act No. 17 of June 3, 1927, provides:

"Section 62. There shall be levied and collected, once only, on the sale of any articles the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, and at the time of sale in Porto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale."

That Section 16(a) of the Internal Revenue Act of Puerto Rico, amended by Act No. 17 of June 3, 1927, prescribes:

"Section 16a. There shall be levied and collected, once only, on all articles included in Section 62 of this Act, a tax of two (2) *per centum ad valorem*, as provided in Section 4 hereof, when said articles are manufactured, produced or introduced in Porto Rico for domestic use or consumption and not for commercial purposes; *Provided*, That said tax shall be levied on articles taxable under this Section as soon as they are manufactured, produced or introduced in Porto Rico for domestic use or consumption; but payment shall be made before said articles are withdrawn from the factory or from the custody of the post office or customs authorities, or from the express or steamship agencies, in such manner as the Treasurer of Porto Rico may by regulation prescribe."

6. That the Treasurer of Puerto Rico, defendant herein, claims that the fuel oil drawn from the aforesaid bonded tank to be used on ships on the high seas, as specified under paragraph 4 of this

complaint, is subject to a tax of two percent *ad valorem* under Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico above quoted, which tax would approximately amount to \$26,500, according to the information given to the plaintiff by the defendant; and the plaintiff would be subject to grave losses and inconveniences if it paid the said amount to the defendant without legally having to do so; and hence it applies to this Honorable Court with this declaratory judgment proceeding.

7. That there is no law in Puerto Rico levying a tax on fuel oil imported from foreign countries and destined for re-shipment to foreign countries or for the use of steamers on the high seas, beyond the coastwise trade of Puerto Rico, when said fuel oil is drawn from a bonded tank under the jurisdiction and authority of the Federal Government, inasmuch as the tax levied under Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico above quoted, is applicable merely to articles sold, manufactured, produced or imported into Puerto Rico for domestic use and consumption, which actually enter the Island and its commerce.

8. That if the aforesaid sections of the Internal Revenue Act are construed in conformity with the claim of the Treasurer and are applied to fuel oil exported for use on the high seas, then said sections are null and void in so far as they tax the fuel oil so exported, for the following reasons:

(a) The fuel oil in question never comes into Puerto Rico nor is merged with the property of the Island, as a bonded tank amounts to a free port, is entirely beyond the control of the Insular Government and, contrary thereto, is absolutely under the control of the United States Government, the said fuel oil never being within the reach of the tax laws of Puerto Rico.

(b) Because the tax so levied is a tax on exports, specifically prohibited by Section 3 of the Organic Act of Puerto Rico.

(c) Because said tax amounts to a direct tax on interstate and foreign commerce, and the Legislature of Puerto Rico lacks power to levy it as such.

(d) Because the fuel oil in controversy herein was still in the course of foreign commerce at the time it was delivered to ships for use on the high seas, the same having been brought to Puerto Rico from foreign countries for said purpose and having remained under the control and authority of the Customs Service of the United States up to the moment in which the same was delivered to said ships.

9. That there being a diversity of opinion between the plaintiff and the defendant with regard to the construction and application of Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico, the plaintiff prays that this Honorable Court intervene in accordance with the provisions of Act No. 47 of April 25, 1931, so that it may judicially declare the rights and obligations of the parties under the sections of the Internal Revenue Act above quoted.

Wherefore the plaintiff respectfully prays this Honorable Court:

1. That the defendant be summoned in due course.
2. That after a hearing, judgment be rendered holding that the aforesaid Act does not authorize the defendant to tax and collect the two percent *ad valorem* tax on the fuel oil exported by the plaintiff for use on the high seas, as described in paragraph 4 of this complaint.
3. In the alternative, that if Sections 62 and 16(a) tend to authorize the fixing and collection of the two percent *ad valorem* tax on the fuel oil drawn from bonded tanks under the jurisdiction of the Federal Government, for re-shipment and use on the high seas, then that such provisions are null and void in so far as they tax the fuel oil exported for use in the high seas.
4. That the plaintiff be granted any other additional remedy that may be authorized by the aforesaid Act relative to declaratory decrees, approved April 25, 1931, in order that due

compliance be given to whatever judgment may be rendered in favor of the plaintiff.

San Juan, Puerto Rico, September 20, 1935.

JAMES R. BEVERLY,
JOSE LOPEZ BARALT,
Attorneys for the Plaintiff.

VERIFICATION.

I, Dyer W. Ramsey, of legal age, single and resident of San Juan, Puerto Rico, being duly sworn, depose and say:

That my name and personal description are as stated; that I am the president of the West India Oil Company (P. R.); that I have read the foregoing complaint and that each and everyone of the facts alleged therein are true, of my own personal knowledge; that the reason why the deponent is signing this verification is that the plaintiff is a corporation and the undersigned is one of its officers, duly authorized to subscribe this affidavit.

D. W. RAMSEY.

Sworn to and subscribed before me by Dyer W. Ramsey, of legal age, single, resident of San Juan, Puerto Rico, and president of the West India Oil Company (P. R.), to me personally known, this twenty-first day of October, 1935.

R. CASTRO FERNANDEZ,
Notary Public.

Affidavit No. 131.

Copy served this

day of October, 1935.

B. FERNANDEZ GARCIA,
ANGEL C. CALDERON,
Attorneys for the Defendant.

[Same title.]

DEMURRER.

Now comes the defendant Rafael Sancho Bonet, as Treasurer of Puerto Rico, by the undersigned Attorney General and Assist-

ant Attorney General of Puerto Rico, and files this demurrer to the petition herein:

That the petition, as drawn, does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

Wherefore the defendant prays this Honorable Court that this demurrer be sustained and that the petition be overruled, with any other legal pronouncement.

San Juan, Puerto Rico, October 7, 1935.

B. FERNANDEZ GARCIA,
Attorney General,
ANGEL C. CALDERON,
Assistant Attorney General.

Copy served this eighth day of October, 1935.

JAMES R. BEVERLY,
Attorney for the Plaintiff.

[Same title.]

ORDER OF DISTRICT COURT, SAN JUAN.

To the amended petition herein the defendant demurred on the ground that the said petition does not state facts sufficient to constitute a cause of action. A declaratory decree is involved and the amended petition substantially alleges as follows: That the predecessors in title of the plaintiff established in this city, under the laws of the United States and after obtaining a license from the Customs Service, a bonded tank for receiving or depositing fuel oil brought from foreign countries, part of which is destined for re-shipment to foreign countries and part to be used by ships on the high seas in the course of interstate and foreign commerce, and part to be used and consumed in Puerto Rico; the said fuel oil being, while the same is deposited in the bonded tank, under the absolute control and authority of the Customs Service of the United States with which consent alone the said fuel oil may be drawn. If the oil is drawn for use in Puerto Rico the Federal tax

has to be paid at the time of drawing same and the custody of the custom house service ends; but the oil exported to foreign countries or for re-shipment for use by ships on the high seas, is not subject to any tax. That the treasurer claims that the fuel oil drawn from said tank for use by ships on the high seas is subject to a tax, in accordance with Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico; and that there is not in Puerto Rico any law levying a tax on fuel oil coming from foreign countries and destined for re-shipment to other countries or for use by ships on the high seas; that if the two aforesaid sections of the Internal Revenue Act were applicable, as the Treasurer claims, the same would be null and void for the reasons stated by the plaintiff; that there is a diversity of opinion between the plaintiff and the defendant and hence it invokes the intervention of this court in conformity with the provisions of the Act relative to declaratory decrees.

The parties have filed extensive briefs and the Treasurer claims that a question of fact is involved herein and that hence the petition does not lie.

In fact the Act relative to declaratory decrees authorizes the investigation of a fact, when such a thing is necessary to determine the interpretation of a statute, ordinance, contract or franchise (see Sections 2 and 9 of the Act relative to declaratory judgments or decrees). Paragraph 4 of the amended petition establishes a consummate fact, that is, that 46 million gallons of fuel oil have been drawn and that the Treasurer attempts to levy and collect a tax thereon.

We can not see what judicial investigation may be practised on a consummate fact and much less the reason for dismissing a petition, when the same has not been answered, or at least when an appearance raising an issue and stating facts which allow the court to determine whether the decree requested should be granted or not.

A demurrer admits all the facts of a complaint, and, considering them in the light of the decisions, they, in our opinion, state

sufficient facts in favor of the plaintiff to apply for this declaratory judgment.

The demurrer is overruled and the defendant is granted a term of ten days to answer to the amended petition.

Let the parties be notified.

Given at San Juan, Puerto Rico, this sixteenth day of December, 1935.

C. LLAUGER DIAZ, *Judge*.

Copy of the above order was served on the parties this sixteenth day of December, 1935.

J. FIGUEROA, *Clerk*.

[Same title.]

ANSWER.

Now comes the defendant Rafael Sancho Bonet, as Treasurer of Puerto Rico, by the undersigned Attorney General and Assistant Attorney General and, in answer to the above complaint, respectfully states, alleges and prays:

1. The defendant admits each and everyone of the allegations contained in paragraphs 1, 2, 3 and 5.

2. Of the averments of paragraph 4 of the complaint the defendant admits that from December, 1932 to August, 1935, the plaintiff and its predecessor in title have drawn fuel oil from the bonded tank, but denies, for lack of information and belief, that the total number of gallons of fuel oil pumped during said period was 46 millions. The defendant admits moreover that the fuel oil was delivered to ships for use by the latter on the high seas in interstate and foreign commerce. The defendant denies, however, that the fuel oil drawn from the bonded tank during the above period was destined for export, alleging on the contrary that the delivery of the oil to the ships in question amounted simply and exclusively to a sale in Puerto Rico to ships touching in the ports of this Island. The defendant denies for lack of information and belief that any part of said fuel oil has been consumed in the coast-wise trade of Puerto Rico.

From the averments of paragraph 6 of the complaint the defendant admits that the fuel oil drawn from said bonded tank for the use of ships on the high seas, as described in paragraph 4 of the complaint, is subject to the payment of a two percent tax, but denies that this is an *ad valorem* tax under Sections 62 and 16(a) of the Internal Revenue Act, as claimed by the plaintiff, alleging, on the contrary, that the oil so drawn from said bonded tank was to be sold to ships for use on the high seas and that the same is subject, under Section 62 of the Internal Revenue Act, to the two percent tax, as this section levies a tax on the sale of any articles of commerce not taxed by Section 16 of the same Act, or not exempt from taxation under Section 83 of the same Act, at the time of sale in Puerto Rico; the defendant alleges, moreover, that the fuel oil is not taxed by Section 16(a), nor exempt from the payment of the tax under Section 83, and hence, that the sale of said product is subject to the payment of the two percent tax levied by Section 62. The defendant denies that the plaintiff would be subject to serious losses and inconveniences if it paid the tax to which it refers in the complaint and which it claims it is not legally bound to pay. The defendant alleges, on the contrary, that in accordance with the provisions of Section 62 of the Internal Revenue Act, the plaintiff is bound to pay the tax in question and, consequently, no losses or inconveniences could be caused to same. He denies, furthermore, that the plaintiff is entitled to the declaratory judgment prayed for and alleges on the contrary that that is not the adequate remedy, as there is an adequate proceeding under Act No. 8 of 1927.

4. From the averments of paragraph 7 of the complaint the defendant admits that there is no law in Puerto Rico levying a tax on fuel oil brought from foreign countries and destined for re-shipment to foreign countries, when the same is drawn from a bonded tank under the jurisdiction and supervision of the Federal Government. The defendant denies that there is no law in Puerto Rico levying a tax on fuel oil brought from foreign countries, drawn from a bonded tank, under the jurisdiction and supervision

of the Federal Government, when said product is delivered for use by ships on the high seas and beyond the coastwise trade of Puerto Rico; alleging on the contrary, that once the fuel oil is drawn and delivered to ships for use anywhere, such delivery amounts to the sale of an article for business purposes and is hence subject to the tax fixed by Section 62 of the Internal Revenue Act, as said section does not say that in order that the tax be applicable to the sale of the article, the same has to be used or consumed in Puerto Rico. The defendant denies, moreover, that Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico apply solely to articles sold, manufactured, produced or introduced in Puerto Rico for domestic use or consumption and which really enter the Island and its commerce; alleging on the contrary, that Section 16(a) of the Internal Revenue Act does not apply to fuel oil drawn and delivered to ships for use on the high seas or beyond the coastwise trade of Puerto Rico, Section 62 being the only one applicable, as Section 16(a) has nothing to do with the facts averred under the paragraph in question and in the complaint in general.

5. The defendant denies each and everyone of the averments of paragraph 1 of Section 8 of the complaint and subdivisions A, B, C and D thereof, alleging on the contrary, as to the first subdivision, that the defendant has at no time construed jointly Sections 62 and 16(a) of the Internal Revenue Act for purposes of levying the tax to which the complaint refers, as these two sections are separate, independent and apart from each other, Section 62 being the only one applicable, as sales made in Puerto Rico are involved and not exportations, as alleged by the plaintiff.

A. Fuel oil, while in the bonded tank, is beyond the control of the Insular Government, as it is then under the authority and custody of the Federal Government. But as soon as the said fuel oil is drawn from the tank and sold to a ship, the control of the Federal Government over said product ceases, and it is then that the two percent tax fixed by Section 62 of the Internal Revenue Act applies to the sale made by the plaintiff in Puerto Rico. The de-

fendant alleges, besides, that while the fuel oil is in the bonded tank, there is no merger of this product with the property of the Island, but once it is drawn from the bonded tank to be sold to ships within the jurisdictional waters of the Island of Puerto Rico, a confusion of the fuel oil and the property of the Island of Puerto Rico arises.

B. That the tax so levied on the fuel oil in accordance with the provisions of Section 62 of the Internal Revenue Act, does not infringe the provisions of Section 3 of the Organic Act of Puerto Rico, inasmuch as the delivery of said product to ships for their use, does not amount to an export within the real legal meaning of this term, which has been defined as the carrying away of goods from one country to another. The plaintiff, in selling fuel oil to a ship in Puerto Rico, for the use of the latter, is not carrying out an export.

C. The tax in question does not amount to a direct tax on interstate or foreign commerce, inasmuch as the tax in this case has been levied on a sale entirely carried out in Puerto Rico, and interstate and foreign commerce is affected in no wise.

D. That the fuel oil in controversy herein, in so far as that part delivered to ships for their propulsion is concerned, was not in the course of foreign commerce, inasmuch as the same was drawn from the tank solely and exclusively for purposes of a sale, and that act took effect within the territorial limits of the Island of Puerto Rico. The tax provided by Section 62 of the Internal Revenue Act was levied when the control of the Federal Government over the product had already ceased.

6. The defendant denies of paragraph 9 of the complaint that there exist a diversity of opinion between the plaintiff and the defendant in connection with the construction and application of Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico and, consequently, the intervention of this Honorable Court would lie in conformity with the provisions of Act No. 47 of April 25, 1931, so that the rights and obligations of the parties under the sections of the Internal Revenue Act above quoted be

judicially declared. The defendant denies, on the contrary, that there is no diversity of opinion between the plaintiff and the defendant as regards the interpretation and application of Sections 62 and 16(a) above referred to, in so far as the facts averred in the complaint are concerned, as the latter section has nothing to do with the assessment and collection of the tax which the defendant claims the plaintiff is bound to pay. The duty of the plaintiff to pay the tax in question arises from the provisions of Section 62 and, hence, the discrepancy between these legal precepts exists solely and exclusively in the mind of the plaintiff. There is not, consequently, a real legal controversy under the provisions of Act No. 47 of April 25, 1931, and the declaratory judgment prayed for does not lie. The defendant alleges, furthermore, that there is a plain remedy under Act No. 8 of 1927, which is final and cannot be substituted by the proceeding prescribed by Act No. 47 of 1931.

SPECIAL DEFENSES.

As special defenses the defendant alleges the following:

1. That the petition, as drawn, does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.
2. That the issuance of a declaratory decree does not lie when there is another proper remedy at law.
3. Because a declaratory judgment does not lie when a real legal controversy is not involved.
4. Because a declaratory decree does not lie when the order to be entered in favor of the plaintiff or the defendant does not put an end to the controversy in a definite manner.
5. Because the complaint in this case amounts to a moot case, on which a declaratory judgment does not lie.
6. That this court lacks jurisdiction over the subject-matter, inasmuch as the one applicable herein is not Act 47 of 1931, but Act No. 8 of 1927.

Wherefore the defendant respectfully prays this Honorable

Court that the complaint be dismissed, with all other proper pronouncements.

San Juan, Puerto Rico, December 23, 1935.

B. FERNANDEZ GARCIA,

Attorney General.

ANGEL C. CALDERON,

Assistant Attorney General.

Copy served this twenty-fourth day of December, 1935.

JAMES R. BEVERLEY,

Attorney for the Plaintiff.

[Same title.]

STIPULATION.

Now come the parties in the above entitled case by their respective counsel and, for purposes of the hearing, stipulate as follows:

That between December 3, 1932, and August 31, 1935, the plaintiff delivered to ships plying between Puerto Rico and ports of the United States and between Puerto Rico and foreign ports, a quantity of fuel oil amounting to 45,883,530 gallons, the exact determination of this amount being subject to future examinations to be made in the books of the plaintiff; that said fuel oil was deposited in the bunkers of the said steamers and used and consumed by the latter in said trips, and that the sale price of the aforementioned fuel oil was approximately 2.5 per gallon.

San Juan, Puerto Rico, May 4, 1936.

JAMES R. BEVERLY,

Attorney for the Plaintiff,

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico,

ANGEL C. CALDERON,

Assistant Attorney General.

[Same title.]

STATEMENT OF FACTS, OPINION AND JUDGMENT OF
DISTRICT COURT, SAN JUAN.

The present petition for a declaratory judgment or decree was filed on September 20, 1935. After several incidents took place—the parties considered the matter as an ordinary suit—the hearing was held on May 4, 1936. It was not, however, until October 2 that the petitioner filed an additional memorandum. From the facts admitted by the parties, it appears that the petitioner is a corporation organized under the laws of Puerto Rico; engages in the business of importing, purchasing and selling petroleum and some of its by-products. On December 5, 1932, the predecessor in title of the plaintiff established in San Juan, under the laws of the United States and after obtaining a license from the customhouse service of the Federal Government, a bonded tank for receiving and depositing fuel oil brought from foreign countries, part of which is destined for re-shipment to foreign countries and part for the use of steamers on the high seas in the course of interstate and foreign commerce, and part for use and consumption in Puerto Rico. The said fuel oil, once brought and deposited in the aforesaid bonded tank, is under the absolute control and authority of the Custom House Service of the United States. It can only be drawn from said tank with the consent and under the supervision of the aforementioned United States customhouse service. If the oil is drawn for use and consumption in Puerto Rico it becomes a subject of commerce in Puerto Rico, the Federal tax is paid at the time the oil is drawn, and the custody of the customhouse service over said fuel oil comes to an end. If the oil is drawn from the tank for export to foreign countries and to be re-shipped for use by ships on the high seas and beyond the territorial waters of Puerto Rico, then no Federal tax is levied on same. Sections 62 and 16(a) of the Internal Revenue Act of Puerto Rico, as amended by Act No. 17 of June 3, 1927, provides as follows:

"Section 62. There shall be levied and collected, once only, on the sale of any articles the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, and at the time of sale in Porto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale."

"Section 16a. There shall be levied and collected, once only, on all articles included in Section 62 of this Act, a tax of two (2) *per centum ad valorem*, as provided in Section 4 hereof, when said articles are manufactured, produced or introduced in Porto Rico for domestic use or consumption and not for commercial purposes; *Provided*, That said tax shall be levied on articles taxable under this section as soon as they are manufactured, produced or introduced in Porto Rico for domestic use or consumption; but payment shall be made before said articles are withdrawn from the factory or from the custody of the post office or customs authorities, or from the express or steamship agencies, in such manner as the Treasurer of Porto Rico may by regulation prescribe."

The facts admitted by the answer go that far.

It was stipulated at the hearing that from December 3, 1932, to August 31, 1935, the plaintiff delivered a quantity of fuel oil amounting to 45,883,530 gallons to steamers plying between Puerto Rico and the United States and foreign ports. The plaintiff alleges that there is no act which levies a tax on fuel oil coming from foreign countries, when said oil has been deposited first, and drawn later, in a bonded tank, under the jurisdiction and supervision of the Federal Government. The diversity of opinion arises from the fact that the plaintiff alleges that the fuel oil drawn from said bonded tank for the use of ships for their propulsion exclusively on the high seas, in the course of interterritorial and foreign commerce, when no part of said fuel oil has been consumed in the coastwise trade of Puerto Rico, is not subject to the two per-

cent *ad valorem* tax fixed by the sections of the aforementioned Act; while the Treasurer maintains that such fuel oil is subject, by virtue of Section 62, to the payment of the two percent tax, as a sale made in Puerto Rico is involved. The plaintiff alleges that if the interpretation given to such sections of the law by the Treasurer of Puerto Rico were upheld, the same would be null and void; (a) because the oil in question never enters the Island of Puerto Rico nor merges with its territorial property, as a bonded tank amounts to a free port and the oil is entirely beyond the control of the Insular Government and under the absolute control of the United States Government; (b) because such tax would be an export duty, specifically prohibited by Section 3 of the Organic Act; (c) because such tax would amount to a direct charge on interstate and foreign commerce, and the Legislature of Puerto Rico has no power to levy the same; and, finally, (d) because the fuel oil in controversy herein was still in the course of foreign commerce at the time it was delivered to ships to be used for their propulsion on the high seas, the same having remained under the control and authority of the Customhouse Service of the United States from the time it arrived in Puerto Rico from foreign countries to the time of its delivery to said ships.

As above stated, the contention of the Treasurer is that once the oil is drawn from the bonded tank to be delivered to ships within the jurisdictional waters of Puerto Rico, a merger arises between the fuel oil and the other property of the plaintiff and, hence, that the oil is subject to the payment of a tax. Based on this diversity of legal construction, the plaintiff prays the court that a declaratory judgment be entered holding: (1) that the assessment and collection of a two percent *ad valorem* tax on the aforesaid fuel oil is not authorized by law; or (2) that if Sections 62 and 16(a) authorize the assessment and collection of such two percent *ad valorem* tax on fuel drawn from bonded tanks, under the jurisdiction of the Federal Government, for re-shipment and use on the high seas, then such tax is null and void, inasmuch as it is levied on oil imported for use on the high seas.

The defendant in an extensive answer sets forth the above theory, and alleges the following, as special defenses:

(a) That the petition does not state facts sufficient to constitute a cause of action; (b) that a declaratory judgment does not lie when there is a proper remedy at law; (c) that a declaratory judgment does not lie when there is no real legal controversy; (d) that a declaratory judgment does not lie when the decree to be entered will not put an end to the controversy; (e) because the complaint in this case sets forth a hypothetical case on which a declaratory judgment does not lie; and, finally, (f) that the court lacks jurisdiction over the subject-matter, inasmuch as the law applicable is Act No. 8 of 1927 and not Act No. 47 of 1931.

During the hearing of the case C. H. Lee testified with regard to the amount of fuel oil delivered; that the sale is made in New York and that if any sale is made in Puerto Rico then both the Federal and the local taxes are paid. The parties have filed extensive briefs in support of their respective contentions. A great many pages of the brief for the defendant are devoted to show that a declaratory judgment does not lie herein, as there is no legal controversy, and, furthermore, because there is an adequate remedy at law, to wit, payment under protest.

This question was considered by us in deciding the demurrer to the original petition or complaint. For a complete investigation of these questions reference is made to the note appearing in *Anway v. Grand Rapids R. Co.*, 12 A. L. R. 26. The note to which we refer appears on page 52. Notes on this same question may be found in *Zoercher v. Agler*, 70 A. L. R. 1232. But the most recent and most binding authority to us is found in *Texas Company, Inc. v. Board of Commissioners*, 49 P. R. R. , wherein is established in a categorical manner that the law on declaratory judgments establishes a simple, adequate and complete remedy for cases of this nature. Under the averments of the complaint we are convinced that there is a controversy between the parties and that the same is of importance, inasmuch as the tax

that the plaintiff would have to pay on the various millions of gallons of fuel oil would amount to a sum in excess of \$26,000.

The Treasurer alleges in his brief that the oil delivered to ships for use on the high seas is a sale in Puerto Rico and that as such it is subject to the payment of the tax fixed by law, inasmuch as said tax in no way affects interstate and foreign commerce. He basis his theory in the case of *Gromer v. Standard Dredging Co.*, 224 U. S. 362, wherein it is held that the territory of Puerto Rico has jurisdiction, for tax purposes, over the ports and navigable waters surrounding the Island of Puerto Rico. He also cites the case of *Eastern Air Transport Inc. v. South Carolina Tax Commission*, 285 U. S. 147, where the validity of a statute assessing a tax on gasoline sold for the use of transport planes engaged in interstate commerce was upheld. As may be seen, those cases are not applicable to the one at bar. It is interesting to notice that the defendant in his brief, in discussing the need of upholding the tax, says that if it were decided that fuel oil is not subject to the payment of taxes, that would amount to the allowance of a certain immunity not existing at law, as the bonded tank wherein the fuel oil is deposited would become an instrument to evade the payment of a legal tax, thus depriving The People of Puerto Rico of a tax indispensable to every sovereign government. We dissent from this opinion because, as so often said, the power to tax, no matter how ample its character and extension may be, is necessarily limited to things that are the subject of commerce within the jurisdiction of the state, such subjects being person, property and business. 21 L. Ed. 179. For an illustrative discussion of this principle, see *Commonwealth of Kentucky v. Union Pacific R. Co.*, 49 A. L. R. 1091.

Bonded warehouses are under the control of the Federal Government. This is unquestionable and is so admitted by the defendant. It is clear that while fuel oil is deposited in a bonded tank, it is not subject to taxation by the Government of Puerto Rico. It is unquestionable also that if part of the oil is drawn from a bonded tank for the local use and consumption, the same is subject to a

territorial tax. But the question involved herein is whether the oil delivered to ships that use it in plying between the port of San Juan and that of New York or whether the oil exported to foreign countries, should pay the two percent sales tax in conformity with the provisions of Section 62 of the Internal Revenue Act of Puerto Rico. We have already seen from the foregoing that in order for a tax to be valid it is necessary that the subject on which the tax is levied be within the Island of Puerto Rico. As long as the thing which is the object of commerce does not merge with the property of the taxpayer within the territory of Puerto Rico, that thing is beyond the jurisdiction of this government. It is also our opinion that the plaintiff is right in its construction of Sections 16(a) and 62 of our Internal Revenue Act, in so far as it alleges that when the word "sale" is used therein, it should be interpreted as "sale carried out in the Puerto Rican market." The mere fact that the bonded tank is within our territorial waters does not mean that our Legislature has jurisdiction to levy a tax on articles deposited in said bonded tanks. We do not think either that by the mere fact that the articles are deposited there, they have acquired a taxable situs which allows the government of Puerto Rico to levy such tax. In any event, in the interpretation of statutory precepts of a fiscal nature, all doubts should be decided in favor of the taxpayer. Two cases which throw light on this point are *Surplus Trading Co. v. Cook*, 281 U. S. 647, 74 L. Ed. 109 (1930), and *Standard Oil Co. v. California*, 291 U. S. 242 (1934). The first of these cases decides that property stored in a federal reserve is not subject to taxation by the state. The second holds in a categorical manner that a state may not legislate over matters beyond its jurisdiction and apply such legislation to a territory subject to the control of the United States.

The Treasurer's answer, by its attorney, is to the effect that when the oil in question was deposited in the bonded tank it came to rest within our territory and, consequently, that it is subject to the payment of taxes, irrespective of whether it is destined for the local use or consumed by ships on the high seas. How-

ever, the general rule seems to be that when articles of commerce remain under the custody of the customhouse officers, the importation of said articles is not complete. Under these conditions the fuel oil has never been under the absolute control of the importer and in our opinion the territory of Puerto Rico cannot levy the tax fixed by the above fiscal laws, and, consequently, the plaintiff is not bound to pay the tax claimed.

The court holds that under the facts and decisions, the Internal Revenue Act of Puerto Rico does not authorize the defendant to collect the two percent *ad valorem* tax on fuel oil while this oil remains in bonded warehouses, under the absolute control of the Government of the United States through its customhouse service, as the court is of opinion that such bonded tanks are instrumentalities of the Federal Government, and that if the oil never leaves said tanks to merge with the bulk of the property within the territory of Puerto Rico, that the same does not acquire a taxable situs or status in this Island, and consequently, that the same is not subject to taxation. Judgment is rendered in accordance with the terms of this opinion, with costs in favor of the plaintiff, but not including attorneys' fees.

JUDGMENT OF DISTRICT COURT, SAN JUAN.

The court, for the reasons stated in the foregoing opinion, which is made a part hereof, renders judgment holding that under the facts and the decisions, the Internal Revenue Act of Puerto Rico does not authorize the defendant to assess the two percent *ad valorem* tax on fuel oil as long as said oil remains in bonded tanks under the absolute control of the customhouse service of the United States, as the court is of opinion that such bonded tanks are instrumentalities of the Federal Government and that if the oil never leaves said tanks to merge with the bulk of the property within the territory of Puerto Rico, that said oil does not acquire a taxable situs or status within this Island, and, hence, that it is not subject to taxation. Judgment is rendered accordingly, with costs in favor of the plaintiff, but not including attorneys' fees.

Let this judgment be entered and notified to the parties.

Given in San Juan, Puerto Rico, this twenty-eighth day of October, 1936.

C. LLAUGER DIAZ, *Judge.*

Attest: J. FIGUEROA, *Clerk.*

[Same title.]

NOTICE OF APPEAL.

To JAMES R. BEVERLEY, Esq., *Attorney for the Plaintiff, and to*
JUAN FIGUEROA, Esq., *Clerk of this Court:*

Please take notice that the defendant in the above entitled case, feeling aggrieved by the judgment rendered by this court on the 28th instant in the above entitled suit—served on the defendant the following day, when copy of the service of the judgment was filed with the record of the case—appeals therefrom in its entirety to the Honorable Supreme Court of Puerto Rico, appealing moreover from the pronouncement of costs against the defendant.

San Juan, Puerto Rico, November 27, 1936.

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico.

R. CORDOVES ARANA,

First Assistant Attorney General.

Copy served this twenty-seventh day of November, 1936.

JAMES R. BEVERLEY,

Attorney for the Plaintiff.

[Same title.]

COUNSEL'S CERTIFICATE OF JUDGMENT ROLL.

We, the undersigned attorneys for the parties, do hereby certify:

That the foregoing judgment roll is a true and faithful copy of its original as the same appears in case No. 23,715 on file in the office of the clerk of the District Court of San Juan, Puerto Rico.

And for purposes of the appeal taken by the defendant from the

order rendered herein, we sign these presents, stating that all the documents above copied are relevant to the appeal taken.

San Juan, Puerto Rico, September 17, 1937.

R. CASTRO FERNANDEZ,

Attorney for the Plaintiff.

ENRIQUE CORDOVA DIAZ,

One of the Attorneys for the Defendant.

True and faithful copy of the preceding judgment roll was received this seventeenth day of September, 1937.

R. CASTRO FERNANDEZ,

Attorney for the Plaintiff.

[Title omitted.]

TRANSCRIPT OF EVIDENCE.

[Filed in the Supreme Court of Puerto Rico September 20, 1937.]

Honorable C. LLAUGER DIAZ, *Judge.*

This case was called for trial in open court on May 4, 1936. The plaintiff appeared by its attorney James R. Beyerley and the defendant through Angel C. Calderon, from the office of the Attorney General of Puerto Rico. The Honorable C. Llauger Diaz, judge of this District Court, presided. The following proceedings took place:

Evidence for the Plaintiff.

Sworn testimony of CHARLES H. LEE, Jr.

Q. 1 (by Plaintiff). What is your name? A. Charles H. Lee, Jr.

Q. 1a. Who do you work for? A. For the West India Oil Company (P. R.).

Q. 2. How long have you been in the employ of the West India Oil Company? A. Eleven years.

Q. 3. Have you been all that time in Puerto Rico. A. No, sir, seven years in Puerto Rico.

Q. 4. What position do you now hold in the West India Oil Company? A. Assistant manager.

Q. 5. What is the exact name of the company at present? A. West India Oil Company (P. R.).

Q. 6. And this company is the successor of whom? Of the West India Oil Company of New York? A. Yes, sir.

Q. 7. In all its rights and obligations? A. Yes, sir.

Q. 8. And liabilities? A. Yes, sir.

Judge: That has been admitted.

Q. 9. Does the West India and its predecessor in Puerto Rico have a bonded tank for fuel oil? A. Yes, sir.

Q. 10. When was that tank bonded? A. In December, 1932.

Q. 11. What is the exact date? A. December 3.

Q. 12. What was that tank bonded for? A. To store fuel oil, which is used largely by the steamers plying between Puerto Rico and the States.

Q. 13. Do you know whether the West India and its predecessor from December 3, 1932 to August 30, 1935, delivered any fuel oil to any steamer for its propulsion on the high seas? A. Yes, sir.

Q. 14. Where were the sales of that oil made? A. In New York.

Q. 15. Please explain to the court the procedure used in making those sales and deliveries? A. The contract is signed in New York between the steamship company and the Standard Oil Company of New York; we receive in Puerto Rico notice of said contracts and we deliver the oil to any steamer belonging to the company which entered into such contract.

Plaintiff: We wish simply to clarify a point. There is a stipulation herein referring to the dates mentioned a few minutes ago, that is, December 3, 1932 and August 31, 1935. The plaintiff delivered to steamers for their use on the high seas 45,883,000 gallons of fuel oil. We just wanted to make this point clear.

Q. 16. The oil to which the stipulation refers is drawn from the bonded tank? A. Yes, sir.

Q. 17. All of it? A. Yes, sir.

Q. 18. All the fuel oil delivered to the bunkers of the steamers comes from the bonded tank? A. Yes, sir, it comes from the bonded tank.

Judge: The stipulation of the parties is approved.

Q. 18a (by Judge). Do you have any other tanks besides this one? A. We have two bonded tanks for fuel oil.

Q. 18b (by Judge). And another tank which is not bonded? A. Yes, sir.

Q. 18c (by Judge). For what do you use the tank which is not bonded? A. That is used for local consumption.

Q. 18d (by Judge). So that the tank which is not bonded is the one wherein is deposited the fuel oil used for local consumption? A. Yes, sir.

Q. 18e (by Plaintiff). In whose name are the tanks bonded? A. Of the Federal Government, the custom house.

Q. 18f. Who controls those tanks? A. The custom house.

Q. 18g. The Federal custom house? A. Yes, sir.

Q. 18h. Can you draw oil from that tank without the consent of the Federal Government? A. No, sir.

Q. 18i. How is that oil controlled? A. The Federal Government, the custom house, supervises the receipt by us of the fuel oil, and when delivery to us is complete, the valves of the tanks are strapped or sealed. After that, whenever we wish to draw any oil, we have to call the custom house, they inspect the valves to be sure that the strap or seal was never broken. They supervise the delivery and seal the tank again.

Q. 18j. Do they supervise also the amount of fuel oil delivered? A. Yes, sir.

Q. 19. Do you have to prepare any reports for them? A. They prepare the reports directly.

Q. 20. Do you mean to say that they make their own reports? A. Yes, sir.

Q. 21. Where does that oil come from? A. From Aruba, Dutch West Indies.

Q. 22. You have testified that the sales were made in New York. Please tell the court where invoices are prepared and payments made. A. Invoices and payments are made in New York also.

Q. 23. How does the company bring the fuel oil from Aruba? How is the fuel oil consigned? A. Part of it is destined for use by ships, part for export and part for local use, to be consumed in Puerto Rico.

Q. 24. And you have testified that the part destined for the bunkers of the ships is stored in the bonded tank. Where is stored the part destined for foreign countries, the part to be re-exported? A. In bonded tanks also.

Q. 25. Does the Federal Government charge a tax on fuel oil destined for and delivered to steamers for their use in the high seas? A. No, sir.

Q. 26. Do you know whether there is a general import tax? Custom house duty? A. Yes, sir.

Q. 27. How much is it? A. One-half cent per gallon.

Q. 28. But this tax is not levied on fuel oil destined to be used by steamers? A. No, sir.

Plaintiff: That will be all.

X-Q. 29 (by Defendant). As assistant manager of the West India Oil Company, are you acquainted with the averments of the complaint? A. Yes, sir.

X-Q. 30. The forty-five million odd gallons which according to the complaint were delivered to ships for their use. . . . A. Yes, sir.

X-Q. 31. These steamers belong to what companies? A. To several companies.

X-Q. 32. For example? A. For example to the New York & Porto Rico Steamship Company; to the Bull Insular Line; to Compania Transatlantica Espanola.

X-Q. 33. Does the West India Oil Company have anything to do with these steamship companies? Does it own any shares of these steamship companies? A. Not as far as I know.

X-Q. 34. It does not? A. No, sir.

X-Q. 35. Does the West India Oil Company own a steamship company? A. No, sir.

X-Q. 36. Did you say that the fuel oil to which the complaint refers was brought from Aruba? A. Yes.

X-Q. 37. Where is the oil deposited? A. In San Juan and Ponce.

X-Q. 38. In what place? A. In tanks built for that purpose.

X-Q. 39. The forty-five million odd gallons delivered to the steamers were drawn from what tank? A. From the tank in San Juan.

X-Q. 40. From one tank, or from more than one tank? A. From two tanks.

X-Q. 41. Are these two tanks under the authority of the Federal Government? A. Yes, sir.

X-Q. 42. When the fuel oil comes from Aruba, is there anything to indicate that a certain amount is to be used by the local Puerto Rican market; that so much is to be delivered to steamers for their own use and that so much is to be exported? Is that distribution made beforehand, or does the whole amount come in bulk? A. When we request a certain amount of fuel oil from the States, we have to state the amount which is to be destined for steamers and the amount to be consumed by the local market, but when the oil comes that does not appear.

X-Q. 43. What amount of fuel oil, more or less, do you import every year? A. About 850,000 drums.

X-Q. 44. And every drum has forty-two gallons? A. Yes, sir.

X-Q. 45. Which means about how many gallons?

Plaintiff: Did you ask about the number of drums per year?

Witness: Yes, sir.

X-Q. 46. 800,000 drums at forty-two gallons each? A. About 33 millions per year.

X-Q. 47. Then during the years 1932, 1933, 1934 and 1935 that amount was received multiplied by 4? A. More or less.

X-Q. 48. And of these hundred million gallons, about 45 mil-

lions were delivered to steamers for their use? *A.* Just a minute.

X-Q. 49. The complaint alleges that 46 million gallons approximately were delivered to steamers. *A.* Yes.

X-Q. 50. Where was the oil delivered? *A.* It was delivered from the tanks in our plant to the bunkers of the steamers.

X-Q. 51. Where are those tanks located? *A.* In Puerta de Tierra.

X-Q. 52. Here in San Juan? *A.* Yes, sir.

X-Q. 53. And the delivery of the 46 million gallons to which the complaint refers, was made in San Juan, Puerto Rico? *A.* Yes, sir.

X-Q. 54. And the fuel oil delivered to those ships, was used by them in their trips between ports of Puerto Rico and the United States? *A.* Yes, sir.

X-Q. 55. This oil was not to be used during trips to other countries? *A.* No, sir.

X-Q. 56. And the oil was not brought from Aruba in transit to other countries? *A.* No, sir.

X-Q. 57. Does this mean that the 46 million gallons of oil were drawn from the tanks that the company has in that manner . . . ? *A.* Yes.

X-Q. 58. But the oil was not given away gratis? *A.* No, sir.

X-Q. 59. Then, how was it delivered? *A.* The oil was sold.

X-Q. 60. The tax levied by the Federal Government on that oil, is it fixed on the sale or on the oil?

Judge: What kind of tax is it, a duty or an excise?

Plaintiff: An excise.

Judge: Is it an import duty?

Plaintiff: Exactly, but this is not a competent witness to explain that.

Judge: An import tax?

X-Q. 61. Did you say a moment ago that the West India Oil Company is the successor of whom? *A.* Of the West India Oil Company of New Jersey.

X-Q. 62. Was it such a successor from 1932 to 1935? A. A new corporation was organized on January 1, 1935.

X-Q. 63. From January 1, 1935, to the present, what has been the name of the company? A. West India Oil Company (P. R.).

X-Q. 64. What does the P. R. mean? Of Puerto Rico? A. Yes, sir.

X-Q. 65. Prior to January 1, 1935, and up to the year 1932, what was the name of the company? A. West India Oil Company.

X-Q. 66. What was the company then? A. A New Jersey corporation.

X-Q. 67. An agent? A. An agent of the West India Oil Company of New Jersey.

X-Q. 68. Was this agent duly authorized to deal in those products and to sell them in Puerto Rico? A. Yes, sir.

X-Q. 69. Does that mean that during that period the West India Oil Company could draw gasoline (*sic*) from that tank for the local use, and also for export and for delivery to ships?

Judge: The witness said that there is another tank.

X-Q. 70. When you draw oil from that tank for sale in Puerto Rico, do you pay the tax fixed by Section 62 of the Internal Revenue Act? A. Yes, sir.

X-Q. 71. And when it is exported? A. We don't pay it.

X-Q. 72. And when it is delivered to those ships for their own use, do you pay the tax? A. We do not.

X-Q. 73. You testified a while ago that whenever a delivery of oil is made to the steamers, the contract of sale was executed, where? A. In New York.

X-Q. 74. And the delivery of the oil is made where? A. In San Juan.

X-Q. 75. If I went to your company and ordered one thousand gallons of oil, could you sell me said oil for local use in Puerto Rico? A. Of course.

X-Q. 76. Would you have to cable to New York or New Jersey to find out whether the oil could be sold to me? A. No, sir.

X-Q. 77. That means that you can sell here without the intervention of the parent corporation?

Defendant: That will be all.

Q. 78 (by Plaintiff). Is all the oil brought from Aruba deposited in the bonded tank? A. No.

Q. 79. What part of the oil is deposited in the bonded tank? A. That is a very hard question.

Q. 80. But part is deposited in the bonded tank and part in other tanks? A. Yes.

Q. 81. Are you entitled to draw from the bonded tanks whatever oil may be needed for local consumption, after paying the tax? A. Yes, sir.

Q. 82. Is the object of the bonded tanks to deposit oil to be sold in Puerto Rico? A. No, the main object of the bonded tanks was to make deliveries to steamers.

Q. 83. Then the oil drawn from the bonded tanks for use in Puerto Rico is something incidental? Is that the main part of the business of the bonded tanks? A. No. In San Juan the main business of the tanks is to make deliveries to steamers.

Q. 84. Do you understand my question? Are the sales for the Puerto Rican market something incidental to those bonded tanks? A. I do not understand.

Plaintiff: All right, I am not going to . . .

X-Q. 85 (by Defendant). One last question. You testified that the sale of fuel oil in Puerto Rico is insignificant. You said that the greater part of this oil is destined for the steamers plying. . . . Could you tell the court the average quantity of oil sold in Puerto Rico from those tanks every year?

Witness: From those tanks?

Defendant: From the oil in those tanks for use in the Puerto Rican market. A. Yes, sir.

X-Q. 86. Is it a large or a small quantity? A. The quantity of oil sold locally?

Defendant: Yes. A. Small.

X-Q. 87. When fuel oil is drawn from those tanks to be sold

in Puerto Rico for use in the local market, does the Federal Government charge a tax? *A.* Yes, sir.

X-Q. 88. And when it is exported? *A.* No, sir.

Defendant: That will be all.

Plaintiff: That is all with the witness. I am not going to offer the next witness because his testimony would be a repetition of what this witness has said.

Defendant: Your Honor, we have here an inspector from the Treasury Department. This witness is going to testify about the number of gallons received and delivered, that is, the same that this witness has testified. We shall not . . .

Plaintiff: Will the court allow us to call the witness again to the stand, for a single question?

Judge: Yes.

SWORN TESTIMONY OF CHARLES H. LEE, JR. (Continued).

Q. 89 (by Plaintiff). When the fuel oil is drawn from the bonded tanks for the use of the steamers on the high seas, that is, for the bunkers of the steamers, where does the custody or vigilance of the Federal Government end? *A.* After all the oil is used.

Q. 90. Explain what you mean by that. *A.* The custom house, before allowing . . . We have to give to the custom house a certificate from the captain or from the first engineer of the steamer showing that the oil has been used on the high seas. We can not claim exemptions without this certificate.

Q. 91. Exemption from the custom house duty? *A.* Yes.

Plaintiff: That will be all.

Defendant: We have no question to propound.

Judge: Is the defendant going to offer any evidence?

Defendant: No, your Honor.

Judge: The court grants the parties a common term of seven days to file briefs.

I, Oscar A. Gandia, reporting stenographer of the District Court for the Judicial District of San Juan, Puerto Rico, hereby certify:

That the foregoing is a true and faithful transcript of the stenographic record taken by me during the hearing of this case. I further certify that I have delivered a certified copy of the above transcript to James R. Beverley, Esq., as attorney for the plaintiff, and to the Honorable Attorney General of Puerto Rico, as attorney for the defendant.

And for purposes of the appeal taken to the Supreme Court of Puerto Rico, I sign these presents in San Juan, Puerto Rico, this twenty-eighth day of July, 1937.

O. A. GANDIA,

Reporting Stenographer, District Court.

Filed in the office of the Clerk of the District Court, July 28, 1937.

M. E. R. *Clerk.*

[Same title.]

JUDGE'S APPROVAL OF THE TRANSCRIPT OF EVIDENCE.

I, C. Llauger Diaz, Judge of the District Court for the Judicial District of San Juan, Puerto Rico, do hereby certify:

That I presided the hearing of this case and that I decided the same; that the foregoing is a true and faithful transcript of the evidence adduced by the parties during the trial of this case, as well as of the objections and exceptions taken by the attorneys for both parties, and of the orders of this court.

And for transmission to the Supreme Court of Puerto Rico, as part of the judgment roll of said case, I sign these presents in San Juan, Puerto Rico, this twentieth day of August, 1937.

C. LLAUGER DIAZ, *Judge.*

Copy served this twenty-third day of August, 1937.

J. FIGUEROA, *Clerk.*

OPINION OF THE COURT.

DELIVERED BY MR. JUSTICE TRAVIESO.

San Juan, Puerto Rico, May 10, 1939.

IN THE SUPREME COURT OF PUERTO RICO

No. 7606.

West India Oil Company (P. R.), Plaintiff and Appellee,

v.

Rafael Sancho Bonet, Treasurer of Puerto Rico, Defendant and
Appellant.Appeal from the District Court of San Juan.
Declaratory Judgment.

This suit was filed under the provisions of Act No. 47 of April 25, 1931, to obtain a declaratory judgment in regard to the rights of the litigants.

The plaintiff, the West India Oil Company (P. R.), is a domestic corporation engaged in importing, purchasing and selling oil and products derived from the same. In connection with said business and to facilitate the sale and delivery of said products to purchasers, the plaintiff set up and maintained a bonded tank in the city of San Juan, Puerto Rico, in keeping with the Federal statutes (46 Stat. 743; 19 U. S. C. A., sec. 1555); said tank was used to receive and deposit fuel oil brought from foreign countries to Puerto Rico. The oil thus deposited remains in the tank for an undetermined period of time until it is (a) re-exported to a foreign country; or (b) delivered to the steamers that purchase it to be used as fuel for their engines; or (c) delivered to purchasers for use in Puerto Rico. While it remains in the bonded tank, the oil is under the control of the Customs Service of the Federal Government.

From December 1932, through August 1935, the plaintiff corporation drew about 46,000,000 gallons of fuel oil from said bonded tank and delivered them to the steamers which had purchased it for use in their trips to the Continent and to foreign countries.

The Treasurer of Puerto Rico maintains that the oil thus delivered to said steamers in Puerto Rico is subject to a tax of 2 percent *ad valorem*, which in the present case amounts to \$26,500, more or less. To impose said tax the Treasurer relies on the provisions of Section 62 of the Internal Revenue Act of Puerto Rico, as it was amended by Act No. 17 of June 3, 1927, which reads as follows:

"Section 62. There shall be levied and collected, once only, on the sale of any articles the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, *and at the time of sale in Porto Rico*, a tax of two (2) percent on the price or value of the daily sales of such articles, *whether such sales are for cash or on credit*, which tax shall be paid at the end of each month *by the person making such sale.*" (Italics supplied.)

The plaintiff corporation maintains that Section 62, *supra*, is not applicable to the oil taken out of the tank and delivered to the steamers, for the following reasons:

1st. Because said oil never enters into Puerto Rico nor does it become property within the territory, since said tank is somewhat in the nature of a *tax-free zone*, not subject to the control of the Insular Government, but under the exclusive control of the Federal Government, said oil never being subject to the tax laws of Puerto Rico.

2nd. Because the tax imposed would be an import tax, prohibited by Section 3 of the Organic Act of Puerto Rico.

3rd. Because said tax is a direct burden on interstate and foreign commerce and as such is not included in the powers of the Insular Legislature.

4th. Because the fuel oil was still in foreign commerce when it was delivered to the steamers for use on the high seas.

The District Court of San Juan decided that said oil had never acquired a taxable *situs* in Puerto Rico and therefore rendered judgment in favor of plaintiff. The defendant appealed. He

alleges that the District Court has erred specifically in upholding each of the four reasons set forth by the plaintiff corporation against the imposition of the tax; and has committed a fifth error, in awarding costs to plaintiff.

To complete the above findings of fact we should state that according to the testimony of Mr. Lee, assistant manager of the plaintiff corporation, the contracts for the sale of oil are signed in New York by the steamship company and the Standard Oil Company of New York; the latter notifies the plaintiff corporation that said contracts have been signed and the oil is delivered by said corporation to any ship of the purchaser steamship line that requests it. Mr. Lee also testified that when a delivery of oil is to be made, the plaintiff notifies the custom's office, which inspects the valves of the tank to see that the seals have not been broken and supervises the delivery and notes the amount delivered; that the bills and payments are made in New York; that when the oil comes from Aruba the amount to be used locally is nowhere stated, nor the amount that is to be delivered to the ships, nor the amount that is to be re-exported, but that it all comes together and is thus deposited in the tanks; that the tanks are situated in the Ward Puerto de Tierra, of San Juan; that when delivery of the oil is made to the ships *the contract of sale is entered into in New York, but the oil is delivered in San Juan.*

1. The lower court in deciding the case accepted as an unquestionable legal doctrine the allegations of the plaintiff corporation that a bonded tank belonging, as in this case, to a private corporation becomes a tax-free zone or a Federal Zone and as such is beyond the control or jurisdiction of the Insular Government, merely because employees of the Federal Government supervise and inspect the deposit and withdrawal of the fuel oil. Having accepted said doctrine the judge of the lower court said:

"The Bonded Tanks are under the control of the Federal Government. This is indisputable and the defendant accepts it as a fact. It is clear that while the fuel oil is in the Bonded Tank it is not subject to any tax whatsoever by the territory

of Puerto Rico. . . . We have previously seen that in order that a tax be valid it is necessary that the object taxed be within the Insular jurisdiction. While the object does not become a part of the property of the taxpayer in the Territory of Puerto Rico it is out of the jurisdiction. . . . The mere fact that the tank is within our territorial waters does not mean that our Legislature has jurisdiction to impose a tax on goods deposited in said tanks. We do not think that by the mere fact of being there it has acquired a taxable *situs* which would authorize the Government of Puerto Rico to impose a tax upon it."

Let us examine the jurisprudence cited by the lower court to uphold its decision.

In the case of *Surplus Trading Co. v. Cook*, 281 U. S. 647, 74 L. Ed. 109, the State of Arkansas imposed a tax on a number of woolen blankets that the corporation Surplus Trading Co. bought from the Government of the United States and which were deposited in a military warehouse at "Camp Pike". Said corporation refused to pay the tax and alleged that "the personal property on which it was laid was located within Camp Pike—an army mobilization, training and supply station of the United States lying within the exterior limits of Pulaski County—the lands in which had been purchased by the United States, with the consent of the legislature of the State, for the purpose of establishing, erecting and maintaining such an army station;" and that the tax laws of the State could not be applied to property so located, being in violation of Article 1, paragraph 8, clause 17, of the Federal Constitution, which gives Congress exclusive jurisdiction over lands bought by the Federal Government with the consent of the State Legislature, for the construction of forts, warehouses, arsenals, docks and other necessary buildings. In deciding that the tax imposed was illegal, the United States Supreme Court stated as follows:

"It is not unusual for the United States to own within a State lands which are set apart and used for public purposes.

Such ownership and use without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal."

The case was decided in favor of the corporation because of the fact that Camp Pike is a military reservation bought by the Federal Government with the consent of the Arkansas Legislature. Referring to military reservations on lands acquired without said consent from the state, the court said:

"If there be private property within such a reservation which is not held or used as an incident of military service it may be subjected to taxation like other private property within the State."

It is evident that the Federal jurisdiction supersedes the state authority and jurisdiction only when the lands have been acquired by the Federal Government for one of the purposes enumerated in Article 1 of the Constitution, *supra*, and when the Legislature of the state has given its consent to the granting and to the surrender of its jurisdiction. See: *Com. v. Clary*, 8 Mass. 72; *Mitchell v. Tibbetts*, 17 Pick 298; *United States v. Cornell*, 2 Mason, 60, Fed. Cas. No. 14,867; *State ex rel. Jones v. Mack*, 62 Am. St. Rep. 811; *Ft. Leavenworth R. Co. v. Lowe*, 114 U. S. 525; *United States v. Unzenta*, 281 U. S. 138, 74 L. ed. 761.

In the other case cited by the lower court, *Standard Oil Co. v. California*, 291 U. S. 242, 78 L. ed. 775, the State of California tried to apply a statute which imposed upon every distributor a tax on every gallon of gasoline "sold and delivered by him within this State", to a certain amount of gasoline sold and delivered by the Standard Oil Company to the Post Exchange of the San Francisco Penitentiary. The Supreme Court of the State upheld the tax. The Supreme Court of the United States reversed the judgment, saying:

"Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio—put that area beyond the field of operation of her laws. Accordingly, her Legislature could not lay a tax upon transactions begun and concluded therein.

"A State can not legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

See: Note, 74 L. ed. 761.

The case of *United States v. Unzenta*, *supra*, deals with a murder committed in a freight car within the limits of the military reservation of Fort Robinson, in the State of Nebraska. The Supreme Court upheld the exclusive jurisdiction of the Federal Government and in an opinion written by Chief Justice Hughes stated as follows:

"When the United States acquires title to lands, which are purchased by the consent of the legislature of the State within which they are situated 'for the erection of forts, magazines, arsenals, dockyards and other needful buildings', (Const. Art. I, sec. 8) the Federal jurisdiction is exclusive of all State authority. With reference to land otherwise acquired, this court said in *Fort Leavenworth Railroad Company v. Lowe*, 114 U. S. 525, 539, 541, that a different rule applies, that is, that the land and the buildings erected thereon for the uses of the national government will be free from any such interference and jurisdiction of the State, as would impair their effective use for the purposes for which the property was acquired."

See: *People v. Suarez*, 51 P. R. R.

After a thorough study of the above cited cases we feel bound to declare untenable the contention that a bonded tank belonging to and constructed on private property in Puerto Rico of a corporation, is a tax-free zone or Federal property, over which the

Insular Legislature has no jurisdiction whatsoever, for the only reason that employees of the Customs Service control and inspect the movement of the fuel oil deposited in said tank to facilitate the business of the corporation.

The question that we must consider and decide in this case is not whether or not the Insular Legislature is empowered or whether or not it has jurisdiction to impose a tax on fuel oil while deposited in bond in the tanks of the West India Oil Company. We find no allegation whatsoever in the complaint of said corporation to the effect that the Insular Treasurer has tried to impose such tax. The question before us may be expressed as follows:

Is the Treasurer of Puerto Rico legally authorized to impose and collect the 2 percent tax provided for by Section 62, *supra*, on the price of the fuel oil that the plaintiff corporation bound itself to sell by a contract entered into in New York, which oil was to be delivered at the dock in Puerto Rico by pumping it from the tanks to the ships of the purchaser corporations?

The tax to which Section 62, *supra*, refers is a sales tax that the Treasurer of Puerto Rico is bound to impose and collect once only on the sale of any object of commerce. *Flores Alvarez & Co. v. Gallardo*, 36 P. R. R. 105. According to said statute the above tax should be imposed and collected "at the time of sale in Puerto Rico". The decision of the judicial problem which has been brought before us depends for its solution on the interpretation that we give to the phrase "at the time of sale in Puerto Rico".

We accept as an indisputable premise that the fuel oil is an article of commerce the sale of which if it is consummated in Puerto Rico is subject to the payment of the tax. And if the other premise, that is that the sale of the oil was consummated in Puerto Rico, is established, we would be forced to the inevitable conclusion that the Treasurer was correct in applying the statute to it.

The appellee corporation sustains that as the contract of sale was entered into, the bills made and the oil paid for in New York, the sale must be considered *as consummated* in New York

and not in Puerto Rico; and that the fact that at the moment when the sale was carried out the oil was in Puerto Rico, where delivery was made to the purchaser, does not authorize the Treasurer to impose the 2 percent tax on said sale.

The Treasurer argues in opposition that for the purposes of a tax a sale *is consummated* where the delivery of the thing sold is made and that the place where the contract is signed or the price stipulated is paid is of no importance whatsoever.

The complainant corporation has not considered it necessary to show us copies of the contracts entered into in New York between it and the steamship companies. In fact, it has not even referred to said contracts in its amended petition. The fact of the existence of said contracts was first brought forth in the testimony of Mr. Lee, to which we have referred. And if we accept said testimony in its entirety, the only thing that we can get out of it is that they were simple contracts entered into and signed in New York for the sale of a certain amount of fuel oil situated in Puerto Rico, which was to be taken from the tanks of the corporation, measured and delivered at the dock in Puerto Rico to the ships of the purchasers when these should request it.

We have no doubts that the contracts between the oil corporation and the steamship companies were perfected from the moment they were signed in New York, the contracting parties having agreed as to the thing object of the contract and as to the purchase price, without requiring the previous delivery of one or the other. Section 1339 of the Civil Code, 1930 ed. The agreement in regard to the object and the purchase price is sufficient to constitute a valid contract of sale binding as between the purchaser and the vendor, the former having an action to demand the delivery of the thing sold to him and the latter to claim the payment of the price agreed upon.

However, we are not trying to determine the rights and obligations as between the purchaser and the vendor, but the obligation that a vendor who consummates a sale of an object of commerce within the limit of a state enters into with a third party, the state.

Manresa, in his Commentaries to the Spanish Civil Code, in dealing with *the perfection and the consummation* of a contract of sale says as follows:

"From the moment of agreement, and without any other requisite, the contract, we repeat, is perfected and the obligations of the parties arise; but the transmission of the property does not exist until the thing has been delivered. The delivery of the thing refers to the consummation; the section which we are studying merely states the moment in which the contract is perfected. . . .

We said that the generally accepted rule sustains the doctrine of the transmission of the property merely by agreement and without the necessity of the previous delivery of possession, and that, *on the contrary, our code still requires said requisite to consider the property transmitted.*" (Italics supplied.) 10 Manresa, page 60, 2d ed.

And the Commentator Scaevola says:

"All these considerations lead us to declare as a consequence *that the transmission of the title of the thing sold from the vendor to the purchaser takes effect at the time when the contract is consummated and not simply when it is perfected.*" (Italics supplied.) 23 Scaevola, 318.

The same doctrine has been upheld by this court in *Olivari v. Bartolomei*, 2 Judgments of the Supreme Court of Puerto Rico 79; *Capo v. S. A. Panzardi & Co.*, 44 P. R. R. 225; and *Benitez Flores v. Llompart*, 50 P. R. R. . . . See: Section 549 of the Civil Code, 1930 ed.

The jurisprudence in the States is to the same effect:

"The contract for the presses, while made in New York, was to be executed and consummated in Louisiana. . . . The presses and their appurtenances remained the property of the plaintiff and at their risk until thus tested and accepted. Hence the delivery of the presses was to be accomplished

here. The contract therefore must be held to be a Louisiana contract, and the presses subject to the lien accorded by our law to the vendor." *De la Vergne Refrig. Mach. Co. v. New Orleans & W. R. Co.*, 26 S. 455. See: 16 S. 764.

"A sale is deemed to be made at the place where it is executed by a transfer of the property in the goods from the seller to the buyer." 55 C. J. 213.

See: *Fred Miller Brewing Co. v. De France*, 57 N. W. 959;
Weil v. Golden, 141 Mass. 364, 6 N. E. 229.

"Accordingly, in the absence of any agreement of the parties or any special circumstances to the contrary, if an order is given for goods and is accepted by delivery of the goods to a carrier for shipment with the intention of transferring the property therein to the buyer, *the place of shipment is the place of sale, by the law of which the sale is governed.*" 55 C. J. 213. (Italics supplied.)

See: *Peo. v. Hill Top Metals M. Co.*, 133 N. E. 303;
Peo. v. Young, 237 Ill. 196, 86 N. E. 589;
City of Carthage v. Duvall, 202 Ill. 234, 60 N. E. 1099;
Phoenix Packing Co. v. Humphrey Ball Co., 108 Pac. 952;
Clafin v. Mayer, 41 La. Anni. 1048, 7 S. 139.

In the present case the title or right of property could not be transmitted to the purchaser until the oil was taken from the tank, measured and delivered to the ships.

"But the acceptance of the delivery order will not transfer the property if something remains to be done, such as weighing or measuring, to identify the goods or ascertain the quantity sold." 55 C. J. 562. See pages 530-542.

See: *Iron City Grain Co. v. Arnold*, 215 Ala. 543, 112 So. 123.
Lopez & Moran v. Sobrinos de Ezquiaga, 34 P. R. R. 75.

In accordance with the authorities cited we must arrive at the conclusion that the contract or promise of sale entered into in

New York was not consummated until the oil was extracted from the tank, measured and delivered to the ships in their tanks.

The plaintiff corporation argues that in providing that the tax on the sales shall be imposed and collected "at the time of sale in Puerto Rico" the intention of the legislator was to impose and collect a tax when the contract of sale was entered into or perfected and not when the sale is consummated by the delivery of the object.

In the dictionary of the Spanish Language we find the following definitions:

Verify—(From the Latin *verus*, true and *facere*, to do.) 3.

—Realize, effect.

Effect—(From the Latin, *effectus*, effect.) To bring to pass, to execute.

Realize—Verify, to accomplish.

Consummate—To carry out something fully.

It is evident that the verbs "verify", "effect", "realize", and "consummate", all express the same idea or concept: the carrying out or accomplishment of an act.

We are, therefore, of the opinion, and we so decide, that in providing in Section 62, *supra*, that the 2 percent tax shall be imposed and collected "at the time of sale in Puerto Rico" and that said tax shall be paid "by the person making such sale", the legislator had the intent to and meant to impose the tax at the place of and at the moment when the sale was consummated by the delivery to the purchaser of the thing sold, without taking the manner of paying the purchase price into consideration, since the tax is made applicable to all sales whether "for cash or on credit". To sustain the opposite would be to make the evasion of the tax a simple matter, in New York as well as in Puerto Rico, since the courts of that state have held that the tax may not be levied when the thing object of the contract is delivered out of the city of New York even though the contract is entered into or signed in said city. *United Artists Corporation v. Taylor*, 7 N. E. (2d) 254, 273 N. Y. 334, affirming 248 App. Div. 207.

2. The contention of the plaintiff corporation that the tax levied by the Treasurer on the oil delivered to the ships is an export duty prohibited by Section 3 of the Organic Act of Puerto Rico is in our opinion untenable.

"To export" means to send goods and merchandise from one country to another. "Export" as a noun signifies the object exported. Generally, as used in the Constitution and laws of the United States, the transportation of goods from this country to a foreign country. The term "exportation" is defined in Corpus Juris as follows:

"A severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country; the act of carrying or sending merchandise abroad . . ." 25 C. J. 217.

In *Swan etc. Co. v. United States*, 190 U. S. 143, 47 L. ed. 984, the following was said:

"It cannot mean simply a carrying out of the country. . . . Nor would the mere fact that there was no purpose of return justify the use of the word 'export'. Coal placed on a steamer in San Francisco to be consumed in propelling that steamer to San Diego would never be so designated. Another country or State as the intended destination of the goods is essential to the idea of exportation."

3. The plaintiff corporation has invoked the commerce clause of the Federal Constitution, alleging that the tax that the Treasurer attempts to levy and collect on the oil delivered in Puerto Rico to the ships "constitutes a direct burden on interstate and foreign commerce and therefore the Legislature of Puerto Rico has no authority to impose said tax".

We have examined the Federal jurisprudence on this point with the following results.

In *Kelley v. Rboads*, 188 U. S. 1, 4 L. ed. 359, the plaintiff was taking his herd of sheep from the Territory of Utah to the State of Nebraska crossing through the State of Wyoming. While

crossing said state, the sheep pastured in the fields along the way. The State of Wyoming imposed and collected a tax from the plaintiff in keeping with a statute that provided that all live stock brought into the state to pasture in its fields should pay a tax for the fiscal year during which it was brought into the state. The plaintiff invoked the protection of the commerce clause and alleged that his sheep were in Wyoming, *in transitu*, as interstate commerce and were not subject to the tax. The Supreme Court so held, and in its opinion, after examining the foregoing jurisprudence, said:

"The law upon this subject, so far as it concerns interference with interstate commerce, is settled by several cases in this court, which hold that property actually in transit is exempt from local taxation, although if it be stored for an indefinite time during such transit, at least for other than natural causes, or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities. (Citations.) . . .

"The substance of these cases is that, while the property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But if it be actually in transit to another State, it becomes the subject of interstate commerce and is exempt from local assessment."

In *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 48 L. ed. 538, the plaintiff, a corporation of the State of New Jersey engaged in the manufacturing of wire, nails, etc. in its factories in various states, in order to facilitate the sale and delivery of its products, chose the city of Memphis in the State of Tennessee, as its distribution point. On arriving there its products were deposited in a warehouse of a transportation company which delivered them to the persons to whom the plaintiff sold them. The State of Tennessee levied a tax on said products and the corporation refused to pay it, alleging that the goods were in transit in

Tennessee to be delivered to its customers and that the tax which was being levied was in violation of the commerce clause of the Federal Constitution. The Federal Supreme Court upheld the validity of the tax and said:

"With these facts in hand we are of opinion that the court below was right in deciding that the goods were not in transit, but, on the contrary, had reached their destination at Memphis, and were there held in store at the risk of the Steel Company, to be sold and delivered as contracts for that purpose were completely consummated."

See: *General Oil Co. v. Crain*, 209 U. S. 211, 52 L. ed. 754; *Susquehanna Coal Co. v. South Amboy*, 228 U. S. 665; *Bacon v. Illinois*, 227 U. S. 504; *State v. Maxwell Motor Sales Corporation*, 171 N. W. (Minnesota) 566; 61 C. J. 241.

In our opinion the tax which the Treasurer is attempting to levy and collect is not in conflict with the commerce clause of the National Constitution.

4. The fourth and last contention of the plaintiff corporation is that "the fuel oil was still in foreign commerce when it was delivered to the ships to be used on the high seas."

We have hereinbefore stated that the Treasurer did not and does not attempt to levy a sales tax on the fuel oil while it is still deposited in the bonded tank, under the control and supervision of the customs service. If he were attempting such a thing the case would be easy to decide, since such a tax would be a clear violation of Article I, Section 10, Paragraph 3, of the Federal Constitution, which prohibits the States from levying taxes or duties on imports or exports.

The Supreme Court of the United States in *American Steel & Wire Co. v. Speed*, *supra*, clearly established the difference between imports from foreign countries and those from one state to another, saying:

"Since *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 684, it

has not been open to question that taxation imposed by the States upon imported goods, whether levied directly on the goods imported or indirectly by burdening the right to dispose of them, is repugnant to that provision of the Constitution providing that 'No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports.' Article 1, Sec. 10, paragraph 3. And *Brown v. Maryland*, also settled that where goods were imported they preserved their character, as imports, and were therefore not subject to either direct or indirect state taxation *as long as they were unsold in the original packages in which they were imported*. A recent case referring to the authorities and restating this elementary doctrine is *May v. New Orleans*, 178 U. S. 496, 44 L. ed. 1165, 20 Sup. Ct. Rep. 976. Assuming that the goods concerning which the state taxes in this case were levied were in the original packages and had not been sold, if the bringing of the goods into Tennessee from another State constituted an importation, in the constitutional signification of that word, it is clear they could not be directly or indirectly taxed. But the goods not having been brought from abroad, they were not imported in the legal sense and were subject to state taxation after they had reached their destination and whilst held in the State for sale. . . . The several States, therefore, not being controlled as to such merchandise by the prohibition against the taxation of imports, it was held that the States had the power, after the goods had reached their destination and were held for sale, to tax them, without discrimination, like other property situated within the State."

The point involved in *Brown v. Maryland*, *supra*, was whether or not without violating the Constitution a State may impose the condition of taking out a license at a cost of \$50 upon an importer of foreign goods before he may sell the goods so imported. The Supreme Court in an opinion of its Chief Justice Mr. Marshall

held that said tax was unconstitutional because it was an import duty. From the opinion of that eminent jurist we copy as follows:

"But while we admit that sound principles of construction ought to restrain all courts from carrying the words of the prohibition beyond the object the constitution is intended to secure; that there must be a point of time when the prohibition ceases, and the power of the state to tax commences; we cannot admit, that this point of time is the instant that the articles enter the country. It is, we think, obvious, that this construction would defeat the prohibition. . . .

It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; *but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports, to escape the prohibition in the constitution.*" (Italics supplied.)

Applying the rules established in the cases we have cited to the facts in the present case, we must necessarily hold that when the importer took from the bonded tank a certain number of gallons of oil and delivered them to a ship at the dock in Puerto Rico, to consummate a sale already agreed upon, said sale was subject to the tax levied by Section 62 of the Internal Revenue Law, *supra*; that the oil thus sold, extracted and delivered by the importer lost its character as an import and came into Puerto Rico as an object of commerce and from that moment on was subject to the insular fiscal jurisdiction (*West India Oil Co. v. Gallardo*, 6 F. (2d) 523); that the fact that the oil has been delivered to a ship which is going to use it in its trips in interstate or international commerce does not make the oil an export, since said product was not consigned to any foreign or national port (*Swan & Finch Co. v.*

United States, supra) ; that the mere purchase of supplies or equipment which are to be used in a business in interstate commerce does not so confound said purchase with that business as to exempt it from the payment of the tax levied by the insular law equally on all sales carried out or consummated within its jurisdiction (*Eastern Air Transport v. Tax Comm.*, 285 U. S. 147) ; and finally that as the delivery of the oil was made at the wharf, in the San Juan harbor, the sale was consummated within the fiscal jurisdiction of Puerto Rico and was, therefore, subject to the payment of the 2 percent tax, which being a sales tax in the nature of an excise tax and not a property tax. (*Gromer v. Standard Dredging Co.*, 224 U. S. 362.)

Since no violation of a Federal statute has been invoked which would give ships engaged in interstate or international commerce the privilege of buying, or oil corporations, of selling, within the limits of a state, objects of commerce, without having to pay the local excise taxes on sales carried out within the limits of the state, we must hold that the West India Oil Company is legally bound to pay the sum claimed by the appellant Treasurer. To decide otherwise would be to make the act discriminatory against the other merchants engaged in the same business.

For the above reasons the judgment appealed from should be reversed, without any award of costs.

MARTIN TRAVIESO,

Associate Justice.

[Title omitted.]

JUDGMENT OF SUPREME COURT OF PUERTO RICO.

San Juan, Puerto Rico, May 10, 1939.

For the reasons stated in the foregoing opinion, the judgment appealed from rendered by the District Court of San Juan on October 28, 1936, is hereby reversed, without special pronouncement of costs.

It was thus pronounced and ordered by the court as witness the

signature of the chief justice. Mr. Justice Wolf dissented and Mr. Justice de Jesus took no part in the decision of this case.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[MEMORANDUM: Petition for appeal, dated June 12, 1939; order allowing appeal, June 14, 1939; citation, dated June 15, 1939, returnable within sixty days; cost bond for \$300, Fidelity & Deposit Company of Maryland, surety; and order approving cost bond, dated June 15, 1939, are here omitted. A. I. CHARRON, *Clerk.*]

[Title omitted.]

ASSIGNMENT OF ERRORS.

Now comes West India Oil Company (P. R.) and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in this cause from the judgment of this court entered May 10, 1939, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Puerto Rico in the above entitled case, there is manifest error, to wit:

1. The court erred in holding that fuel oil brought from a foreign country to Puerto Rico and placed in tanks bonded under the authority of the United States Customs laws where it remained under the authority and control of the United States customs authorities, and subsequently transferred from such bonded tanks direct to the bunkers of ships to be used for their propulsion on the high seas in interstate and foreign commerce is subject to the sales tax imposed by Section 62 of Act No. 85 of the Legislature of Puerto Rico approved August 20, 1925 as amended by Act No. 17 approved June 3, 1927.

2. The court erred in holding that fuel oil brought from a foreign country and placed in such bonded tanks under the authority and control of the customs authorities of the United States

and subsequently transferred from such bonded tanks direct to the bunkers of ships for their propulsion on the high seas in interstate and foreign commerce, acquired a situs in Puerto Rico for tax purposes at the moment it is pumped from the said bonded tanks to the bunkers of the ships.

3. The court erred in holding that fuel oil brought from a foreign country and placed in bonded tanks under the authority and control of the United States customs authorities and subsequently transferred from such bonded tanks directly to the bunkers of ships for their propulsion on the high seas in interstate and foreign commerce, enters into Puerto Rico for tax purposes at the moment it is being pumped from the said bonded tanks to the bunkers of ships.

4. The court erred in holding that a contract made in the State of New York for the sale of foreign fuel oil to be delivered to ships' bunkers, from federally bonded tanks in Puerto Rico where it had been deposited upon arrival from a foreign country, for the use of such ships on the high seas in interstate and foreign commerce, is subject to the tax on sales made in Puerto Rico as provided in Section 62 of Act No. 85 of the Legislature of Puerto Rico approved August 20, 1925 as amended by Act No. 17 approved June 3, 1927, when bills for said oil are rendered in New York and payment made there, the only act taking place in Puerto Rico being the pumping of such oil from the bonded tanks to the bunkers of the ships.

5. The court erred in holding that a statute taxing sales made in Puerto Rico includes a tax on the delivery of articles sold on a contract made in the State of New York where the accounts for the same were rendered in the State of New York and payment made therein.

6. The court erred in failing and refusing to hold that fuel oil brought from a foreign country and delivered into bonded tanks under the authority and control of the United States customs authorities and subsequently transferred from such tank directly to the bunkers of ships for use on the high seas in interstate and

foreign commerce, had never entered the jurisdiction of Puerto Rico for tax purposes and had never become a part of or mingled with the general mass of property within the Island of Puerto Rico.

7. The court erred in failing and refusing to hold that fuel oil brought to the Island of Puerto Rico from a foreign country and there deposited in bonded tanks under the authority and control of the United States customs authorities and subsequently transferred directly from such tanks to the bunkers of ships for use on the high seas in interstate and foreign commerce, was still in the course of interstate and foreign commerce at the time of such delivery to the ships' bunkers and hence not subject to a Puerto Rican sales tax.

8. The court erred in failing and refusing to hold that a tax on the delivery of fuel oil brought from a foreign country to Puerto Rico and there placed in a bonded tank under the control of the United States customs authorities and subsequently transferred direct to the bunkers of ships for their propulsion in interstate and foreign commerce, constitutes a direct burden on interstate and foreign commerce and as such is beyond the powers of the Legislature of Puerto Rico.

9. The court erred in holding that foreign fuel oil brought to the Island of Puerto Rico and placed in bond and subsequently delivered from bond to ships for consumption on the high seas in interstate and foreign commerce, had come inside the tariff barrier of the United States and had become subject to local taxation on the delivery thereof to the ships.

10. The court erred in holding that the statute taxing sales at the time of sale in Puerto Rico is applicable to a sale made in the State of New York when the physical transfer of the article sold was made from bonded tanks in Puerto Rico under the control of the United States customs authorities to the bunkers of ships engaged in interstate and foreign commerce.

11. For other errors appearing on the record.

Wherefore the plaintiff prays that the judgment herein rendered by the Supreme Court of Puerto Rico be reversed with costs.

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for WEST INDIA OIL COMPANY (P. R.).

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals, as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this tenth day of July, 1939.

B. MARRERO RIOS,

*Official Interpreter and Translator
of the Supreme Court of Puerto Rico.*

[Title omitted.]

CLERK'S CERTIFICATE.

I, Joaquin Lopez, secretary-reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.

I further certify that the translation of said papers and proceedings has been revised by the official translator and interpreter of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed

the seal of this court, in the City of San Juan, Puerto Rico, this twenty-fourth day of July, 1939.

JOAQUIN LOPEZ,

Secretary-Reporter of the

Supreme Court of Puerto Rico.

[\$24.75 in cancelled excise tax stamps here attached.]

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On October 18, 1939, this cause came on to be heard, and was fully heard by the court, Honorable Scott Wilson and Honorable Calvert Magruder, Circuit Judges, and Honorable Hugh D. McLellan, District Judge, sitting.

Thereafter, to wit, on December 15, 1939, the following Opinion of the Court was filed:

OPINION OF THE COURT.

December 15, 1939.

McLELLAN, J. The question presented by this appeal is whether oil brought to Puerto Rico, deposited in bonded tanks and later pursuant to a contract for its sale drawn off into ships for use therein on the high seas and elsewhere is subject to a sales tax by virtue of the following Puerto Rican statutory provisions:

"Internal Revenue Law of Puerto Rico, as amended by Act No. 17 of June 3, 1927; Laws of 1927, Special Session, pp. 458-486.

"Sec. 62. There shall be levied and collected, once only, on the sale of any article the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, and at the time of sale in Porto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale." (Page 472.)

"Sec. 16 (a). There shall be levied and collected, once only, on all articles included in section 62 of this Act, a tax of two (2) *per centum ad valorem*, as provided in section 4 hereof, when said articles are manufactured, produced or introduced in Porto Rico for domestic use or consumption . . . but payment shall be made before said articles are withdrawn from the factory or from the custody of the post office or customs authorities, or from the express or steamship agencies, in such manner as

the Treasurer of Porto Rico may by regulation prescribe." (Page 484.)

The District Court of San Juan concluded that the transactions in question were not taxable; the Supreme Court of Puerto Rico reversed the District Court's judgment. The pertinent facts may be stated briefly. The appellant, West India Oil Company (P. R.) is a corporation chartered under the laws of Puerto Rico. Having obtained a United States license, it maintained two bonded tanks for receiving and depositing fuel oil brought from foreign countries. When so deposited in a bonded tank the oil is within the joint custody of United States Government Customs officials and the proprietor and can be withdrawn only with the consent of the Customs officials. *Tit. 19 U. S. C. Sec. 1555*. It remains in the tank until it is either exported, delivered to steamers for use for their engines as fuel, or delivered to purchasers for use in Puerto Rico. In the last case, it is entered through customs and the duty paid. In and before August, 1935, the Appellant withdrew and delivered about 46,000,000 gallons of fuel oil from the bonded tanks and delivered it to steamers which had purchased it for use in their voyages to the Continent and to foreign countries.

When oil was to be sold in this way, contracts for its sale were signed in New York by the Standard Oil Company of New York and the purchasing steamers or their owners. The appellant did not put in evidence any such contracts and except for the suggestion that the appellant is one of the New York Company's subsidiaries, all that we know is that the Standard Oil Company of New York notified the appellant of the signing of the contracts, which in turn delivered the oil to the steamers requesting it. When such a delivery is to be made the customs office is notified and the delivery supervised by its officials. In such cases, no duties are exacted by the United States. The oil is thus delivered to the steamers. Bills therefor are presented and paid in New York.

If, as the District Court said, the oil was not subject to local

taxation while in the bonded tanks, a question which we are not called upon to decide, this would not prevent the imposition of a tax upon its sale to the steamers for use in their voyages. The sales tax is not a property tax. It is founded upon Congressional authority given to the Legislature by the Organic Act of Porto Rico, Tit. 48, Section 741, to lay Internal Revenue taxes. It is an excise tax to be levied upon the exercise of a privilege. *Indian Motorcycle Co. v. United States*, 283 U. S. 570; *Patton v. Brady*, 184 U. S. 608. It falls in the same category with the tax on the manufacturer of sugar discussed in *Loiza v. Porto Rico*, 57 F. (2d) 705. No question as to the right to tax property while within the control of the Customs officials is here presented. The tax is upon transactions which involve the release of such control and are consummated contemporaneously with or after such control is relinquished. The power of the Puerto Rican Government to impose a tax of the kind here involved does not seem to us doubtful. And we think the provisions of the statute imposing an ad valorem tax "on the sale of any articles the object of commerce . . . at the time of the sale in Puerto Rico" are applicable. The fact that the consummation of the sales by the delivery of the oil in Puerto Rico was preceded by a contract between the buyers and the Standard Oil Company of New York in that State leads to no different conclusion.

The situs of this tangible and movable personal property was in Puerto Rico. On principle and by the weight of authority title to such chattels passes according to the law of the place where they are. *Beale, The Conflict of Laws*, Sections 255.3 and 255.5 and cases there cited. Such is the rule in New York, where the contract between the Standard Oil Company and the buyers of the oil was made. *D'Ivernois v. Leavitt*, 23 Barb. 63. As heretofore intimated we are left in the dark as to the terms of the contracts made in New York. Whatever those terms were, we think upon this Record that title to the oil passed in Puerto Rico and that under the governing principles of the ter-

ritorial law, the transactions here considered are not tax free by reason of the fact that contracts for the sale of the oil were made in New York or the fact that bills therefor were presented and paid in that State. It is unnecessary here to discuss the Sales Act or the Common Law as to the circumstances under which the making of a contract for sale operates to pass the title of the goods before delivery to the buyer. The authorities cited in the opinion of the Insular Supreme Court clearly support the view that in Puerto Rico title to the goods does not pass before delivery to the buyer, and that without such delivery, the sale is not consummated. The decision that within the meaning of the Section of the Internal Revenue Law of Puerto Rico imposing a tax "on the sale of any article of commerce . . . and at the time of the sale in Puerto Rico" the sale does not occur before delivery, involves the construction of a local statute and a consideration of the local Civil Code, derived from the Spanish Code. We have no need here to invoke the well established rule that the decisions of the local Supreme Court interpreting local statutes and laws are entitled to great respect and should be sustained in the absence of clear or manifest error. *Diaz v. Gonzalez*, 261 U. S. 102, 105; *Bonet v. Yabucoa Sugar Co.*, 306 U. S. 505, 509. The Insular Court's determination that the sales occurred in Puerto Rico and that they were not consummated "until the oil was taken from the tank, measured and delivered to the ships" seems right to us.

It is urged on the appellant's behalf that the transactions at bar are not taxable because of the provision in the Organic Law of Puerto Rico that "no export duties shall be levied or collected. . . ." Tit. 48 U. S. C. Sec. 741. But the fuel oil was not destined for a foreign port. As stated in *Swan & Finch Company v. United States*, 190 U. S. 143, "whatever primary meaning may be indicated by its derivation, the word 'export' as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country." We do not regard the oil put on board for consumption at sea as

"exports" within the meaning of Section 3 of the Organic Act of Puerto Rico.

Resisting the appellant's contention that the fuel oil was at all times within the channels of foreign and interstate commerce and that a tax on its sale would be a burden on such commerce, the appellee calls our attention to *Lugo v. Suazo*, 59 F. (2d) 386, where this court said that "the Commerce Clause does not extend to Puerto Rico". Compare *Inter-Island Steam Navigation Co. v. Territory of Hawaii*, 96 F. (2d) 412. But we do not rest our decision here on inapplicability of the Commerce Clause. Assuming without intimating its relevancy, we think the Insular Supreme Court was right in concluding that there was here no such direct burden on commerce as to invalidate the tax. And in view of its opinion in which the authorities are considered, a detailed discussion of this aspect of the case is unnecessary. The appellant in the course of its regular business of selling oil caused some of it to be stored in its own tanks for indefinite periods whence it was sometimes sold for domestic use, sometimes for export and at other times for delivery to ships for consumption at sea. During all the time, though subject to the joint custody of the United States Customs officials, it received the protection of the insular laws. The oil was held for sale and its transportation halted for that purpose. It was then sold or its sale consummated in Insular territory by a domestic corporation, not for export but for use at sea and we discover no valid reason for invalidating an excise tax based on the privilege of conducting such business.

The judgment of the Supreme Court of Puerto Rico is affirmed, with costs to the appellee.

On the same date, to wit, December 15, 1939, the following Judgment was entered:

JUDGMENT.

December 15, 1939.

This cause came on to be heard October 18, 1939, upon the transcript of record of the Supreme Court of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, December 15, 1939, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is affirmed, with costs to the appellee.

By the Court,

ARTHUR I. CHARRON, *Clerk*.

Thereafter, to wit, on January 25, 1940, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages, numbered 1 to 60, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including January 30, 1940, in the cause in said court numbered and entitled,

No. 3501.

WEST INDIA OIL COMPANY (P. R.),
PLAINTIFF, APPELLANT,

v.

R. SANCHO BONET, TREASURER,
DEFENDANT, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this thirtieth day of January, A. D. 1940.

[SEAL]

ARTHUR I. CHARRON, *Clerk*.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to the writ.

(8718)